

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JEFFREY DALE TINER

Petitioner,

v.

**JEFF PREMO, Superintendent,
OREGON STATE CORRECTIONS,**

Respondent.

Civ. No. 6:13-cv-02112-CL

ORDER

MCSHANE, Judge:

Magistrate Judge Mark D. Clarke filed a Findings and Recommendation (ECF No. 16) on November 18, 2014, and the matter is now before this court. *See* 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72. Petitioner Jeffrey Dale Tiner timely filed Objections to Judge Clarke's Findings and Recommendation on December 1, 2014 (ECF No. 21). The Respondent did not file any Objections and did not respond to Petitioner's Objections.

1 – OPINION AND ORDER

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the District Court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). See also *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir.2003) (en banc); *United States v. Bernhardt*, 840 F.2d 1441, 1444 (9th Cir.1988).

This Court carefully reviewed Petitioner's Objections and concludes that they do not provide a basis to reject or modify the Findings and Recommendations of Judge Clarke. This Court reviewed the record *de novo*, found no errors, and concludes it is correct. I find no error in the factual determinations made by Judge Clarke in his Findings and Recommendation (ECF No. 16) and conclude it is correct. I also find no legal error in Judge Clarke's Findings and Recommendation (ECF No. 16).

In his Objections (ECF No. 21), Petitioner reiterates his arguments from his initial Petition for Writ of Habeas Corpus (ECF No. 2), Memorandum in Support of Petition (ECF No. 3), and Brief in Support of Petition (ECF No. 15). These arguments are primarily focused on the merits of Petitioner's underlying state convictions. The bottom line is that the Petitioner's state court proceedings regarding appeals of his state convictions are still pending and thus Petitioner's state court remedies have not been exhausted as required by 28 U.S.C. § 2254(b)(1)(A). Therefore, as Judge Clarke correctly stated, "Under these circumstances, Petitioner's petition is premature. *Coleman v. Thompson*, 501 U.S. 722 (1991); *Rose v. Lundy*, 455 U.S. 509 (1982); *Brown v. Maas*, 11 F.3d 914, 914 (9th Cir. 1993); *James v. Borg*, 24 F.3d 20, 24 Cir.), *cert denied*, 513 U.S. 935 (1994)." (ECF No. 16 at p.2).

THEREFORE, IT IS HEREBY ORDERED that, Magistrate Judge Clarke's Findings and Recommendation (ECF No. 16) is adopted in its entirety. Accordingly, Petitioner's Petition for Writ of Habeas Corpus (ECF No. 2) is **DISMISSED without prejudice**, as set forth in Judge Clarke's Findings and Recommendation (ECF No. 16). The Clerk of the Court is ordered to enter a judgment dismissing this action *without* prejudice. A Certificate of Appealability is also **DENIED**.

Petitioner's Motion for Summary Judgment (ECF No. 19) and Motion titled "Petitioner's Motion for Immediate Relief/Release Pursuant to FRCP Rule 56" (ECF No. 22), both of which were filed *after* Judge Clarke's Findings and Recommendation was filed, are both **DENIED as moot**.

IT IS SO ORDERED.

DATED this 17th day of March, 2015.



Michael J. McShane
United States District Judge